THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.21967 of 1996

Dated 19-02-2007

Between:
K.Rama Das.

..... PETITIONER

AND

The Chairman/Vice Chancellor, Executive Council, Sri Padmavathi Mahila Viswavidyalayam, Tirupathi & another.

.....RESPONDENTS

**THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION No.21967 of 1996**

**O R D E R:**

The action of the respondents in not promoting the petitioner as an Assistant Registrar with effect from 08-06-1989 is questioned, in this writ petition, as being arbitrary and illegal.

The petitioner was appointed as a Grade-II Steno in the respondent-University on 04-05-1983. He was promoted as Superintendent with effect from 10-10-1983 and was absorbed on permanent basis, vide proceedings dated 22-10-1986. The Service Rules, prior to its amendment, prescribed the qualifications, for promotion to the post of Assistant Registrar, as three years of service in the cadre of Superintendent and declaration of probation in the said cadre. Petitioner contends that since he was the only eligible candidate for promotion to the post of Assistant Registrar, the first respondent appointed him as Full Additional In-charge of the post of Assistant Registrar with effect from 20-02-1989, vide proceedings dated 24-02-1989. Reference is made to the meeting of the Executive Council held on 08-06-1989, to contend that the Executive Council had resolved to promote the petitioner as an Assistant Registrar. Petitioner contends that one of the members of the Executive Council had suggested that clarification be sought from the Government whether a male candidate could be appointed or not and, as a result, the respondent-University, vide letter dated 15-06-1989, had requested the Government to clarify whether a male candidate could be appointed as an Assistant Registrar in the respondent-University. It is stated that the Registrar of the University, vide letter dated 19-08-1989, had informed the

Government that the Executive Council, in its meeting held on 08-06-1989, had, resolved to promote the petitioner as an Assistant Registrar since he was the only internal candidate eligible for the said post. Petitioner would contend that despite repeated representations, he was not promoted as an Assistant Registrar. Reference is made to the letter of the Government dated 17-09-1990 informing the respondent-University that there was no need for clarification and that the University ought to have taken a decision with regards promotion of the petitioner. Petitioner would contend that, even after the letter dated 17-09-1990, the respondents did not authorize his promotion, ignoring the resolution of the Executive Council in its meeting held on 08-06-1989 and had promoted him only on 06-02-1992.

The petitioner filed W.P.No.4061 of 1996 questioning the action of the respondents in not promoting him with effect from 20-02-1989 and this Court, by order dated 06-03-1996, directed the respondents to consider the representation of the petitioner and pass appropriate orders. The respondents, by order dated 16-04-1996, rejected the petitioner's request.

In the counter affidavit filed by the Registrar of the respondent-University, it is stated that the very appointment of the petitioner as a steno-typist was contrary to the Service Rules, but the University had sympathetically considered his case for appointment to the post of Grade II Steno and had later absorbed him as a Superintendent. Respondents would contend that the Service Rules were amended in the year 1991 and, as per the amended Service Rules, appointment to the post of Assistant Registrar is by promotion from the cadre of Superintendent/Secretary to Vice-Chancellor and that the candidate must have put in at least five years of service as Superintendent and must have put in a total service of 15 years. It is stated that, prior to

the date of promotion of the petitioner on 06-02-1992, Assistant Registrars were taken on deputation and were repatriated to their parent departments after completion of their deputation period. While conceding that the petitioner herein had been kept in additional charge of the post of Assistant Registrar on one occasion and again with effect from 20-02-1989, it is stated that he was paid 1/5$^{th}$ of the pay on one occasion and 1/10$^{th}$ of the pay for another period in accordance with FR (49)(1)(b). It is stated that under the pre-amended rules, appointment to the post of Assistant Registrar was by selection:

(i) By promotion from the category of Superintendent.
(ii) By direct recruitment.
(iii) By deputation from any other University.
(iv) By transfer from the category of Lecturers in the University service.

It is stated that employees, who were holding additional charge of a higher post and drawing additional charge allowance, were not entitled, as a matter of right, to claim promotion even though the post was vacant for a long duration and, therefore, the question of regularisation of the services of the petitioner as Assistant Registrar with effect from 08-06-1989 did not arise. It is also stated that the Executive Council, in its meeting held on 08-06-1989, had not promoted the petitioner as an Assistant Registrar but had merely approved to consider his case after obtaining clearance of the Government and that seeking clarification from the Government could not be construed as an approval for appointment as the clarification was once again placed before the Executive Council for its decision. It is stated that the Executive Council subsequently in its meeting held on

06-02-1992, had promoted the petitioner as an Assistant Registrar

with effect from that date. Reference is also made to the report of the Advisor to the Vice-Chancellor, who was appointed as one man Commission to examine the issue and who had reported that mere holding an additional charge of a higher post and drawing additional charge allowance did not confer any right or claim for promotion.

The Executive Council of the respondent-University is the appointing authority, for appointment to the post of Assistant Registrar. The entire controversy revolves around the resolution of the Executive Council in its meeting held on 08-06-1989. The matter, which was placed for consideration before the Executive Council, was:

"To consider the appointment of Sri K.Rama Das, Superintendent as Assistant Registrar by promotion" and the resolution of the Executive Council reads thus:

"Approved. To address the Government for the clearance."

While Sri V.Jagapathi, learned counsel for the petitioner, would contend that the word 'approved' indicates that the Executive Council had approved the appointment of the petitioner as Assistant Registrar, Smt Ch.Lakshmi Kumari, learned standing counsel for the respondent-University, would submit that what was approved was only to consider the appointment of the petitioner as Assistant Registrar and to address the Government for clearance. The letter dated

19-08-1989 addressed by the Registrar to the Government, pursuant to the resolution of the Executive Council, does indicate that the Executive Council had approved the promotion of the petitioner as an Assistant Registrar. While great reliance is placed on this letter dated 19-08-1989 by Sri V.Jagapathy, learned counsel for the petitioner, Smt Ch.Lakshmi Kumari, learned standing counsel for the respondent-University, would contend that no reliance can be placed

on the understanding of the resolution by the Registrar since he was not the competent authority to appoint persons to the cadre of Assistant Registrar.

The Government, in its letter dated 19-07-1990, informed the respondent-University that all promotions within the University had to be done according to the University's internal statutes/regulations, which must be framed, if not already framed and that the case of the petitioner should be considered according to the rules and after the allegations are also verified. The understanding of the Government regarding the letter of the Registrar does support the contention of the learned standing counsel that the Executive Council had earlier resolved to consider the case of the petitioner according to the rules, and, had, in fact, not promoted him. The amended rules were approved by the Executive Council, in its meeting held on 25-06-1991, and, thereafter, the Executive Council, in its meeting held on 03-02-1992, resolved to promote the petitioner as Assistant Registrar.

It is necessary to note that the earlier resolution, of the Executive Council dated 08-06-1989, was not communicated to the petitioner. While the resolution *per se* is ambiguous and is capable of more than one interpretation and the letter addressed by the Registrar to the Government on 19-08-1989 does indicate that the resolution was construed by the Registrar as the petitioner having been promoted as the Assistant Registrar, the fact remains that the Executive Council, in its subsequent meeting held on 03-02-1992, again considered the petitioner for promotion to the post of Assistant Registrar and resolved to approve the promotion of the petitioner as Assistant Registrar with effect from the date of his joining duty. Pursuant to the resolution of the Executive Council, in its meeting

held on 03-02-1992, the Registrar of the University issued orders dated 06-02-1992 informing the petitioner that he was promoted as Assistant Registrar and was being placed on probation for a period of one year within a continuous period of two years from the date of his joining as Assistant Registrar. The petitioner, vide letter dated 06-02-1992, informed the Registrar that in obedience to his orders dated 06-02-1992, he may be permitted to report for duty as Assistant Registrar in the afternoon of 06-02-1992. As noted above, the earlier resolution of the Executive Council dated 08-06-1989 was not even communicated to the petitioner and the subsequent resolution dated 06-02-1992 effects promotion, of the petitioner, as an Assistant Registrar only from the date he joined duty. Pursuant to the resolution of the Board of Management, in its meeting held on 03-02-1992, the petitioner was informed, vide letter dated 06-02-1992, that he was promoted as an Assistant Registrar and that his probation would commence from the date he joined duty and on the very same day the petitioner sought permission to join duty. The petitioner, having accepted appointment as an Assistant Registrar, vide proceedings dated 06-02-1992, without demur or protest, and in the light of the fact that the earlier resolution of the Executive Council was not even communicated to the petitioner nor was a copy of the letter addressed by the Registrar to the Government on 19-08-1989 marked to him, cannot place reliance on the earlier resolution of the Executive Council dated 08-06-1989 to contend that he was entitled to be promoted as Assistant Registrar with effect from 08-06-1989, (the date on which the Executive Council had so resolved). Such a contention does not merit acceptance.

One other contention of Sri V.Jagapathi, learned counsel for the petitioner, which is required to be taken note of, is that the

petitioner has all through been holding full additional charge. It is well settled that an incharge arrangement does not confer any right to claim promotion. It is only after an order of promotion is communicated, can a right accrue in favour of the petitioner to claim promotion, as it is well settled that mere selection does not confer any right of promotion.

The writ petition fails and is accordingly dismissed. No order as to costs.

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19-02-2007

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